printed and published af the Government Printing Of all communications may be addressed to "THE

A MOTHER'S FUNERAL.

THE THE LAW WHENAN MACLED, N. D. Ah, sunn ye'll key yer mither down In her lanely bed and narrow; But, till ye're sleepin' by ber side

No'll never meet her marrow! A Talthur's love is strong and deep, And ready is a brither's-A sister's love is pure and sweet-But what love's like a mither's?

Te manna greet ower muckle, bairns, As round the fire ye galther, And see the two chairs empty ther O'mither and a' faither;

Nor diuna let yer hearts be dreich, When Wintry winds are blawin', And un their graves, wi' angry sugh, The spelly drift is spawin'; But think of blyther times gane by-

The mony years of blessing. When sorrow passed the deer, and name Frac 'mang ye a' were missing. And mind the peacets' gleamin' hours When the out-door wark was endin', And after time, when said beads

Wi' yours in prayer were bendin'. And think how happy baith are noo, Absor a 'thecht or tellin': For they're at hame, and young again, Within their Fuither's dwellin'.

Sue, gin ye wish to meet up there For fulther and yer mither, to here their God, and be gude bairns, And 0 leve are another !

Variety.

A Rifle Company-a gang of thieves. Forced Politeness-bowing to circumstances. A bad style of Arithmetic-division among Stokesperean reader to a thermometer-Down,

down thou climbing sorrow! What ancient implement of war does a petu-

hant lover most resemble?-a cross-bow. The wine product for Los Angeles county this muson is estimated at 1,400,000 gallons.

A learned seal in a traveling menageric this sommer is said to be making an excellent "im-A Western paper says, "Since the jubilee,

Boston has run so entirely music-mad that its men weer bruss bunds on their hats." If your neighbor's hens are troublesome and

simil across the way, don't let your angry passion rise. Fix a place for them to lay.

Anent the Bellust riots on Irish reporter says They fired two shots at him; the first shot killed him, but the second was not fatal." Even the derided organ-grinder has his good

point. He supplies to the pent-up poor one of the greatest luxuries of life—a change of air. A Paris confectioner exhibits the following in his window -- Peres Hyacinthe-new sweetments for weddings. Highly recommended by

MM. les Fiances. " Jimfiscated" is a new word cropping out in the American papers. It seems to mean confiscated in a private way, as by a burglar with the

and of his jemmy - in fact, stolen. The Alla, one of the most influential of the San Francisco journals, predicts that America, " betoo the end of the century, will be the most populous and wealthy of any nation in Europe."

The truth (says a Transatiantic paper) is un consciously told in the following line from an advertisemet: "Babies, after having taken one testile of my soothing syrup, will never cry any

A lady gave a burglar a severe flogging with a dusting-brush the other night. She said she wouldn't have done it if she hadn't been under the impression that it was her husband just com-

"May I leave a few tracts?" asked a traveling quack doctor of a lady who responded to his knock "Leave some tracks? Certainly you may," said she, looking at him most benignly over her spece; leave them with the beel towards the house, if you please,"

The equation that has not its duty, its ideal, was never yet occupied by man. Yes, here, in this poor, miserable, hampered, despicable actual, wherein thon even now standest, here or nowhere is thy ideal; work it out therefrom; and working, behave, live, be free .- Carlyle.

the of a class of chubby four-year-old Sundayschool scholars, when talked to by his teacher shout the sine and frailties of the body, was asked, Well, my son, what have you besides this sinful body " Quick as thought the little fellow respended, "A tenn shirt and a nice new pair of

imerches." At a school in Green county, Iowa, the scholare caucht a skunk and put it in the teacher's disk, thinking she would "smell a mice" and give them a holiday. She wasn't one of that kind. She took a spring clothes pis, fastened it on her nose, went on with the exercises, and let the scholars enjoy the perfume.

The following is the first verse of the new "Broker's Anthem," composed for Wall street. It is applicable elsewhere, and is quite comprebensies enough to dispense with the remainder of the production : "Teach me a counterfeit to know, and burgains good to see ; for quarters I to others show, show fifty cents to me."

As a drankard was staggering along the Bowery in New York the other night, he saw street curs pussing him with different colored lights, and playing at the red, yellow, blue and green lamps, was beend solikequining : "I mus' get out o' this place. It's too cickly. They're running the drug stores around on wheels."

The most conscientious conductor of whom we know anything is employed upon the Catawissa Railroad. The other day a woman gave birth to twine while upon the train, and the conductor, after doing all that he could to make things comfortable for the parties, tried to collect two halfforce from the father of the twins for the little

A reporter, not as reliable as romantia in de- contested the appointment, and the Chief Justice, acriting a fashionable wedding, got things mixed before whom the case was heard, appointed A. 1843," and that "Puhalabua's will may be regarded to mose, as his account reads: "She stood be- F. Judd temporary Administrator, as there were as annulling his adoptive act, which in no aspect of fore the after on her head, a fair wreath of orange | several claimants. because upon her dainty feet, lovely white satin shoes upon her reseate lips, a confiding, happy (keiki banai) of the deceased, and all the others widow's mere silence would not suffice to show her emile as she gamed lovingly upon him who stood by her side."

The days come softly dawning, one of the Chief Justice to a jury, and a verdict was nonopa as his child, the woman Nakuspa a former wher another; they creep in at the windows; their rendered in the July term, 1869, that Kauonopa servant of his whom he afterward married, joining fresh morning air is grateful to the lips that part | was "a keiki hanai " of Puhalahua and Nakuapa. | in the adoption. The child lived with them until their music is sweet to the ears that listen A motion to set aside the verdict for want of their death. Pahalahua died in 1866 devising all his to n: until before we know it, a whole life of days has possession of the citadel, and time has cree pro forms was made, based on this verdict, making a will, but when he arrived at her house taken us for its own. by the Chief Justice, awarding the estate to the just before her death, to draw her will at her re-

HAWAIIAN



GAZETTE.

VOL. IX---NO. 10.

Supreme Court.

In the matter of the Petition of Oopa, for a

Writ of Mandamus.

Before ALLEN, C. J., and HARTWELL and WIDE-

MANN, J. J .- In Banco, heard by agreement in

vacation, after January Term, 1873. ALLEN, C.

This is a petition for a Writ of Mandamus

defendant in the suit of John Meek vs. Oopa.

J. delivered the opinion of the Court.

against the right of the plaintiff.

time prescribed by statute.

appeal to be perfected at some future time.

spirit to grant any delays not epecially given.

are given for perfecting the appeal.

trary to its provisions.

HARTWEIL, J. :

this Court by reason of a failure to pay costs

effectual unless perfected by the bond.

Supreme Court-In Banco.

JANUARY TERM, 1873.

BEFORE ALLEN, C. J., HARTWELL AND WIDEMANN, J. J.

Estate of Nakuapa, Deceased.

OPINION OF THE COURT BY WIDEMANN, J.

the Legislature only to lighten it.

WIDEMANN, J. :

dissent.

costs shall be filed.

HONOLULU, WEDNESDAY, MARCH 19, 1873.

claimant. From this decree an appeal was taken to the full Court in banco. The full Court, January term, 1872, decided that the verdict rendered was irresponsive to the issue, and a new trial was ordered. This new trial was had in the January term, 1872, and the verdict of the jury was that the claimant was not "the adopted heir of Nakuapa and Puhalahua." Exceptions

against John Montgomery, Police Magistrate of to the full Court were taken, and the verdict was Honolulu, praying that he may be directed to set aside for the admission of incompetent evidence. The whole case now is submitted to the grant a certificate of appeal as claimed by the full Court on all the evidence, to decide whether Kasosopa is the adopted heir of Nakaspa and This application was heard before Mr. Justice Puhalahua, and entitled to inherit the estate.

Widemann, and the writ awarded by him, from The decision of the Court in the January term, which an appeal was taken. It appears that a which an appeal was taken. It appears that a writ was issued by the said Police Justice, by the Court are of opinion that there was, prior to the which the defendant was summoned to answer written law, a custom and usage which recognized the complaint of the plaintiff, in which it was an adoption, if clearly defined in the contract, by alleged that the defendant is in possession of which the child adopted might be an heir to the certain premises, which be holds unlawfully and property of the adopter;" and WIDEMANN, J.: "The adoption of a child as heir, clearly and definitely It was a process of summary proceeding under the statute, in which judgment was rendered by existing laws, and I therefore, &c., &c."

the Police Justice in favor of the plaintiff, and The custom of adopting an heir, by the above denotice of an appeal was given by the defendant cision made the law of the land, must be not alone to the Justice within twenty-four hours, and a clearly and definitely made, but it must also be bond tendered in six days thereafter. The Justice | proven that it was clearly and definitely made. The declined to grant a certificate of appeal, on the very idea of "clearly and definitely adopting an declined to grant a certificate of appeal, on the ground that a bond had not been filed within the the evidence on this point given at different times during the progress of the case tends to prove that It is purely a question of construction of the the adoption of an heir by a chief was a matter of statute by virtue of which the process was issued. notoriety.

Either party may appeal at any time within The question in the case at bar is: Was the claimtwenty-four hours after entry of the judgment to any Circuit Judge, or to the Supreme Court, but any Circuit Judge, or to the Supreme Court, but and was there a reasonable amount of notoriety of before an allowance for an appeal a bond for the fact?

The brief of claimant's counsel fully and ably sets There is a material distinction between an ap- forth the evidence and argument of his case, and peal and notice of an appeal. The one refers to taking them as a basis, and without considering an appeal complete in itself; the other, to an the conclusion that he has failed to establish the opeal to be perfected at some future time.

This language was used for the purpose of The only witness of the actual adoption is Kapu;

carrying out the intention of the statute. It is and he is also the only witness who states that Pua summary process to recover possession of land | halahua and Nakuapa were living together at the time held unlawfully and against the right of the of the adoption. According to him, Pubalahua was plaintiff. It is unlike the ordinary process of ejectment where a doubtful title is involved, but in this case the defendant holds under the inthis case the defendant holds under the plaintiff, and eaght to deliver up the possession knowledge dates from the first sandalwood expediat the expiration of the term, and the statute is tion. There, in the mountains of Walalus, Pubalaenacted for the express purpose of defeating hua and Kashumanu told him of his adoption, and delays, and it would not be in conformity to its be consequently told the King of it. His recollection as to the date of the birth of claimant, the date The statutes are consistent on the subject of beight of the claimant at the first sandalwood exappeals. By Sec. 245, in case of trespass of pedition is not of the clearest. Kapu, being Puanimals on land, the language is, an appeal shall halahna's head man, would best recollect whether not be allowed unless taken within five days, and or not his master went to the first sandalwood exa bond given for payment of costs. Here five pedition. Taking, therefore, his statement to be days are given. In this case, twenty-four hours the correct one, who told Kukahiko of the adoption vaine of the evidence on that especial matter unless The intent and spirit of this statute is further Pubsiahua himself told him?

illustrated by reference to Section 949, in which From the whole tenor of the evidence I do, how it is declared that when a defendant is proceeded ever, find that Pubalahua and Nakuapa acknowledgagainst for the non-payment of rent, he shall not ed claimant as kaikamahine hanni at various times; be allowed to keep possession and take his appeal | but I am not satisfied that, it Puhalahua adopted unless he first gives a bond to the plaintiff, with hiko, Nakuapa was in any way concerned in that sureties, to pay the cent which may accrue after adoption. I also and from the evidence that Nakuthe appeal. The construction as claimed by the apa frequently held out bopes of inheritance to petitioner would defeat the security for rent for claimant. Pubalahua perhaps did so also. From at least ten days, which would be expressly con- all the words used by the witnesses on this head I could not for a moment infer that they referred to a the testimony, I consider it unnecessary to say foregone conclusion. What Polashbua himself more than that I see no reason from any ad-In Section 1006, a party may appeal by giving meant by them he has shown by his will.

notice of his appeal within five days after judg- Kapu, at this bearing, states that both Pohalahua ment, and within ten days, paying costs and and Nakuapa, at the time of the adoption, declared depositing a bond for costs that may accrue there- that they adopted claimant as their heir. This, after. A party has not appealed until he has and this only, is all the proof offered to sustain done what the statute fully requires of him. In claimant's title to the estate under the decision of the Court cited above. This decision was made under the impression that this "adoption of an heir" was a Hausilan castom. If ever it was such, omitted, it is not an appeal which the Court can | Hawalians knew it, and the witness knew it. Had the witness given this evidence at the first hearing. it would have carried great weight; its coming a this late day materially detracts from its weight. I concur with the view of the Chief Justice. In the King vs. Cullen, July Term, 1869, the and with such frail evidence of the "adoption as There being no proof of any notoriety whatever, defendant was not allowed to bring his appeal to heir," the claim must fall.

within the statutory time. In the Estate of Ke- HARTWELL, J. : liiahonui, January Term, 1866, an appeal was This case, which has been litigating for several taken within the time required by the Rules, years, is now submitted to the Court on all the there being no statute affecting that case, but the evidence to find the facts, and to decide whether appeal was held to be ineffectual for not filing a the claimant Kasosopa is entitled as heir to inbond for costs. This was by analogy with the herit this estate. These proceedings began in statutes of appeal in other cases, for the Rules 1869 by petition for administration, which was required no bond. These decisions by the full brought before His Honor Chief Justice Allen Court rest on reasoning which I suppose con. and the claim of Kanonopa was denied. On apcludes the present case, making the appeal in-Term, 1869, that the claimant was a keiki hanai If the Legislature had intended to allow ten, or foster child of Puhalahua and Nakuapa. A days for filing bond to perfect the appeal in these motion to set aside this verdict for want of evicases I think they would have said so, and that dence was denied. In December, 1870, a decree the words "either party may appeal," used in was made by His Honor the Chief Justice awardthis statute, are not synonymous with the words ing the estate to the claimant by virtue of this "give notice of appeal," used in the general verdict. Appeal was taken from this decree to statute. If the requirement be strict, it is for the full Court in banco, by whom the decree was vacated and a new trial was ordered. The Court agreed that the verdict was inconclusive of the With due deserence to the views above expressed by the Chief Justice and First Associate cree, but were divided on the question of the Justice, and besides fully concurring in the gen- present legality of an ancient adoption as heir. eral principle that laws should be strictly construed, I can still not concur in the above ed the custom as still valid, while the First Asopinion. Under the construction of the law as sociate Justice thought that the Statutes re-

Legislature intended to make such a law, and as in which the ancestor died after the enactment there seems to me to be a possibility of a differ- of those Statutes. ent construction. I feel it my duty to record a

At the second trial in the January Term, 1872, a
verdict against the claimant was rendered, but on exceptions to the full Court, was set aside for the admission of incompetent evidence. The Court however overruled exceptions to the following instructions given to the jury, viz: " Declaration since 1843, (the date of the Act requiring written agree ments of adoption), cannot be received; the adop tion if valid must have been made before 1843. It is Keahi, claiming to be a relative of the de- not enough that Puhalahua took the child before his ceased, petitioned the Court for letters of admin-marriage with Nakuapa, but it must be shown that istration on the estate of Nakuapa. Kanoaopa Nakuapa adopted her as an heir." In approving these instructions, the Court said, "The ancient oral adoption has no force unless complete before the case became an aute-nuptial contract binding on Kanonopa claimed the estate as adopted child the widow unless expressly disaffirmed by her. The

above given, it may become a practical impossi- quiring written wills and deeds and agreements

bility in some cases to fulfill the conditions of the of adoption and directing the descent of property

statute. This would amount to a denial of justice, of intestates, operated to cut off claims under the

and as I can not bring myself to believe that the ancient oral mode of adopting heirs, in all cases

claimed as blood relations. The Chief Justice revival of the original adoption." decided against the claimant. Under this state state of facts, briefly stated: about 1827 or 1828, Pu-The evidence shows to my mind the following Time wears alippers of list, and his tread is of facts an appeal was taken from the decision halabus a man of chief rank adopted the girl Ka-

quest, she was too weak to act. She had never named Kanoaopa to him as her intended devisee. Both Puhalahua and Nakuapa were heard at various times to speak of the child as their "hoiling," a word meaning "heir" or "devisee." One witness said they called her so at the time of the original adoption. On the other hand, many persons connected by blood and marriage, or an intimate terms with the parties, testified that they had never been aware of the child's adoption as helr, or that she was regarded by the adopters as their heir. To this evidence the claimant's counsel strongly objected, as of a negative hearsay nature, incompetent to rebut evidence of an adoption, but the Court admitted it on the ground that no adoption of an heir can be recognized as valid unless it be shown that it was made with sufficient clearness and publicity among the kindred and family friends to make them aware

shown her adoption as the heir of Nakuapa under the rules of law as already laid down by this Court. I am not satisfied of the fact on all the evidence in her favor. All the objections to oral wills apply with full force in this class of cases, for memory is often at fault in regard to declarations made many years ago; and such declarations, unless confirmed in ample manner, are unsatisfactory for the the purpose of showing so solemn an act as the adoption of an heir. This Court has ruled out declarations since 1843, as incompetent under the Act which requires a written agreement of adoption. If such evidence were admissible except for the Statute, it would certainly be as likely to show a mere promise held out, or an intention never carried into effect, as to explain a previous act. Puhalahua's will, made in 1854, shows that he was early aware of the importance of making a will; so was Nakuapa, as shown by her attorney,

The Court held, as the evidence shows, that the adoption of an heir must be shown by circumstances of notoriety among the kindred and family circle of the parties. The objection to this evidence does not seem to me to be valid. The relation sought to be established is not the ordinary one of pedigree, but is one unknown to English and American law. Under that law, evidence of family conduct and of kindred is admitted. Berkely Peerage case, 4 Camp., 416. Shrewsbury Baronetcy case, 7 House Lords, L.

Whatever the grounds of the English rule, whether t be that such evidence is in the nature of admissions against evidence, part of the res gestae, or confirmatory of facts otherwise shown, in this case this evidence is admitted on the broad ground that the requisite publicity is a portion of the case to be proved. In a private bilateral or trilateral contract, want of knowledge on the part of those not parties to it would be negative and incompetent; but it is material in this case, which requires such knowledge to be shown in order to its validity.

kuapa adopted Kasosopa as her beir, and therefore I concur in the judgment of the Court disallowing W. C. Jones for the Claimant.

A. F. Judd and S. B. Dole, contra.

heritance as an adopted child of Naknapa was submitted originally to the Court of Probate, in which I presided, and after careful examination of the law and evidence, I decided that by the ancient custom of Hawaiians, children adopted this case the claimant had not established that relationship, and therefore was not entitled to the inheritance on that ground. As my asditional testimony introduced in the subsequent | Successors to Dowsett & Co., Corner Fort and Qu

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